IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 33744 of 2006(P)

AGAINST THE ORDER IN EP.24/2003 IN OS 122/1989
of MUNSIFF COURT, RANNI

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PETITIONER:

T.M.JACOB, S/O.T.C.MATHEW, AGED 59,
THEVARTHOTTATHIL, VADASSERIKKARA P.O.,
REP.BY POER OF ATTORNEY HOLDER MATHEW S/O.GEORGE
@ MATHEW GEORGE, AGED 54, PUTHETHU HOUSE,
OMALLOOR VILLAGE, KOZHENCHERRY TALUK.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

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1. T.C.JACOB, C.R.R.A.NO.49,
BENEDICT NAGAR, NALAMCHIRA, TRIVANDRUM.

2. MATHEW GEROGE, (9TH D.H.),
CHARUVILA PUTHEN VEEDU,
KARUVELLUR, PUNALUR.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 33744 OF 2006

Dated 19th December 2006

JUDGMENT

Petitioner is appellant in A.S.101/03 on the file of District court, Pathanamthitta. Appeal was filed along with an application under Section 5 of the Limitation Act to condone the delay. As there was delay petitioner could not get an order of stay of execution of decree in O.S.122/89. This petition is filed under Article 227 of Constitution of India for a direction to the Munsiff to keep the order for delivery in abeyance till petitioner obtains an order of stay from the District court.

2. Learned counsel appearing for petitioner was heard.

3. Whether the petitioner is entitled to get an order of stay of execution of the decree is to be decided in the appeal pending before the District court. District court cannot grant an order of stay of execution, before the delay is condoned and appeal is admitted. In such circumstance, executing court is

directed to keep the order for delivery in abeyance for one month from today. Petitioner is at liberty to file an application before the District court, Pathanamthitta for an early disposal of the application to condone the delay in filing the appeal and if such an application is filed, learned District Judge has to pass appropriate order without any delay.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.